

FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: RESIDENTIAL TREATMENT

Items in **bold font** are required by Florida Statutes.

Introductory remarks.

- Explain purpose of the hearing. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

Representation and appointment of counsel.

- If parents do not have counsel, advise parents of right to legal counsel. The offer of counsel must be renewed at every hearing. **§ 39.013(9).**
- **Ascertain whether the right to counsel is understood. § 39.013(9)(a).**
- If counsel is waived it must be on the record. Rule 8.320(b)(2). **Determine if waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigency. **If indigent per affidavit and the parents request it, appoint counsel for parents. § 39.013(9)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently, and voluntarily waive appointed counsel, ask if the parents want to proceed pro se or hire a private attorney. Explain “pro se” if necessary.
- **If parents request a continuance to consult with counsel, if the child is in shelter care, the court must follow the requirements of § 39.402(14) in determining whether to grant the continuance. (*See Continuances, Section 8*)**
- Follow the circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.
- **If the child does not have an attorney, follow the procedure for appointing an attorney for the child. § 39.01305. (*See Attorneys for Dependent Children with Certain Special Needs, Section 8*)**

Parties and participants.

- **Have all parties, participants, and relatives identify themselves for the record with full name and permanent address. § 39.0131. See also §§ 39.402(8)(g) & 39.506(4).** Advise all of the above that the court will use the address for notice purposes until notified otherwise in writing. (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- **If child, parents, legal custodians, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. If parent is absent and has not been**

served, inquire about the diligent search. §§ 39.402(5)(a) & 39.502(1). (See *Service, Section 8*)

- Make findings on the record of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver is present, either in person or remotely; and, if possible, the reasons why any caregivers are not present.
- Provide each caregiver a meaningful opportunity to be heard and provide input to the court. § 39.502(17).
- For all relatives who requested notification pursuant to § 39.301(14)(b), inquire whether each such relative has a report to submit to the court or desires to speak to the court regarding the child. § 39.502(19).

Suitability assessment.

- If DCF believes a child in its custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted *before placement of the child*. § 39.407(6)(b).
- Placement without prior approval of the court must be made pursuant to § 39.407(6). The child may also be placed by the court in accordance with an order of involuntary examination or involuntary placement pursuant to § 394.463 or § 394.467. § 39.407(6).
- Verify that DCF has provided notice to the guardian ad litem and court of placement of the child in residential treatment along with a copy of the suitability assessment by the qualified evaluator. § 39.407(6).
- Appoint a guardian ad litem if one has not already been appointed. § 39.407(6); 8.350(a)(3). (See *Guardian ad Litem, Section 4*)
- The court shall also appoint an attorney for the child. All appointments must conform to the provisions of Rule 8.231. Rule 8.350(a)(3).
- Verify that the guardian ad litem and the attorney, and if the child is a member of a Medicaid managed plan, the plan that is financially responsible for the child's care in residential treatment, have met with the child and have had the opportunity to **discuss the child's suitability for residential treatment with the qualified evaluator conducting the assessment**. § 39.407(6)(c)3; See also Rule 8.350(a)(3).
- Verify that the evaluator's written assessment is complete and that DCF has provided a copy to the court and to all parties. Rule 8.350(a)(3).
- Verify that the guardian ad litem has provided a written report to the court and to all parties indicating the guardian ad litem's recommendation as to the child's placement in residential treatment and the child's wishes. Rule 8.350(a)(3).

Hearing time frames and attendance.

- Verify that the guardian ad litem is represented by an attorney at all proceedings unless the guardian ad litem is acting as an attorney. Rule 8.350(a)(6).

- Upon the filing of a motion for placement, set the matter for a status hearing within 48 hours, excluding weekends and holidays. Rule 8.350(a)(7).
- Verify that DCF has provided timely notice of the date, time, and place of the hearing to all parties and participants. Rule 8.350(a)(7).
- Verify that the child's attorney or guardian ad litem has notified the child of the date, time, and place of the hearing. Rule 8.350(a)(8).
- Do not proceed with the hearing without the presence of the child's attorney. Rule 8.350(a)(8).
- The guardian ad litem may be excused by the court for good cause shown. Rule 8.350(a)(8).
- If no party disagrees with DCF's motion at the status hearing, the motion for placement may be approved. However, if any party, including the child, disagrees, set the matter for hearing within 10 working days. Rule 8.350(a)(9).
- The child must be present at the hearing unless a court appearance is not in the child's best interest. In such circumstances, the child must be provided the opportunity to express his or her views by a method deemed appropriate by the court. Rule 8.350(a)(10).

Motion for placement.

- Verify that DCF's motion includes a statement as to why the child is suitable for this placement and why less restrictive alternatives are not appropriate, including written findings of the qualified evaluator. Rule 8.350(a)(4).
- Verify that DCF's motion states whether all parties, including the child, are in agreement. Rule 8.350(a)(4).
- Verify that copies of the motion were served on the child's attorney and all parties and participants. Rule 8.350(a)(4).
- If the evaluator's written assessment indicates that the child requires immediate placement in a residential treatment center or hospital and that such placement cannot wait for a hearing, then DCF may place the child pending a hearing, unless the court orders otherwise. Rule 8.350(a)(5).

Hearing on placement.

- At the hearing, consider, at a minimum, all of the following.
 - Based on an independent assessment of the child, the recommendation of a DCF representative or authorized agent that the residential treatment or hospitalization is in the child's best interest and a showing that the placement is the least restrictive available alternative.
 - The recommendation of the guardian ad litem.
 - A case review committee recommendation, if there has been one.
 - The written findings of the evaluation and suitability assessment prepared by a

qualified evaluator.

- The views regarding placement in residential treatment that the child expresses to the court. Rule 8.350 (a)(11)(A)(i)-(v).
- Permit all parties to present evidence and witnesses concerning the suitability of the placement. Rule 8.350(a)(11)(B).
- If the child is not suitable for residential treatment, order DCF to place the child in the least restrictive setting that is best suited to meet the child's needs. Rule 8.350(a)(11)(C).

Suitability for residential treatment and the treatment plan.

- Verify that the qualified evaluator has conducted a personal examination and assessment of the child and made written findings that:
 - The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.
 - The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
 - All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable. §§ 39.407(6)(c)1-3.
- Verify that a copy of the written findings of the evaluation and suitability assessment have been provided to DCF and to the guardian ad litem and that they have had the opportunity to discuss the findings with the evaluator. § 39.407(6)(c).
- Inquire as to whether within 10 days after the admission of a child to the residential treatment program, the program director or designee ensured that an individualized plan of treatment was prepared by the program and was explained to the child, to DCF, and to the guardian ad litem, and submitted to DCF. § 39.407(6)(e).
- Inquire if the child was involved in the preparation of the plan to the maximum feasible extent consistent with the child's ability to understand and participate. § 39.407(6)(e).
- Inquire if the guardian ad litem and the child's foster parents were involved to the maximum extent consistent with the child's treatment needs. § 39.407(6)(e).
- Verify that a copy of the plan was provided to the child, to the guardian ad litem, and to DCF. § 39.407(6)(e).
- Inquire whether within 30 days of the child's admission, the program reviewed the appropriateness and suitability of the child's placement in the program and whether the program determined if the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. § 39.407(6)(f).

- Verify that the residential treatment program prepared a written report of its findings and submitted the report to the guardian ad litem and to DCF. § 39.407(6)(f).
- Verify that DCF submitted the report to the court. § 39.407(6)(e).
- Verify that the report includes a discharge plan for the child. § 39.407(6)(e).
- Verify that the residential treatment program continue to evaluate the child's treatment progress every 30 days and include its findings in a written report submitted to DCF. § 39.407(6)(e).

Written report of progress.

- DCF must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress toward achieving the goals specified in the individualized plan of treatment. § 39.407(6)(g)1.
- For any child in residential treatment at the time a juridical review is held, the child's continued placement in residential treatment must be a subject of judicial review. § 39.407(6)(g)3.
- If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order DCF to place the child in the least restrictive setting that is best suited to meet his or her needs. § 39.407(6)(g)4.
- After the initial 3 month review, the court must conduct a review of the child's residential treatment plan every 90 days. § 39.407(6)(h).

Continuing residential placement reviews.

- Schedule a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. § 39.407(6)(g)2.
- Verify that an independent review of the child's progress toward achieving the goals and objectives of the treatment plan was completed by a qualified evaluator. § 39.407(6)(g)2.
- Verify that the independent review was submitted to the court and all parties in writing at least 72 hours before the 3 month review hearing. § 39.407(6)(g)2.
- Set review hearings every 3 months, until the child is placed in a less restrictive setting.
- At each 3 month review hearing, if the child is not represented by an attorney, the court must appointed counsel. Rule 8.350(b)(2).
- At the 3 month review hearing the court shall determine whether the child disagrees with continued placement. Rule 8.350(b)(2).
- If the child is not suitable for continued residential treatment, order DCF to place the child in the least restrictive setting that is best suited to meet the child's needs.
- Any judicial review of a child in residential treatment must address the continued

placement of the child in residential treatment. § 39.407(6)(g)3.

- Order that the child be present at all hearings unless the child's mental or physical condition is such that a court appearance is not in the child's best interest. In such circumstances, the child must be provided the opportunity to express his or her views to the court by an appropriate method. Rule 8.350(c).
- At the hearing, apply a standard of proof of clear and convincing evidence to determine whether the evidence supports involuntary commitment of a dependent child to a residential mental health treatment facility. Rule 8.350(d).

Responsibility for costs.

- **After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse DCF or other provider of medical services for treatment provided.**
- **The parents or legal custodian remain financially responsible for the cost of medical treatment provided to the child even if they did not consent to the medical treatment. § 39.407(13).**

Set the next hearing.

- When setting non-TPR hearings, be cognizant of counsels' TPR hearings that are scheduled before other judges and defer to those TPR hearings.
- Provide written notices of the next hearing at the conclusion of every hearing and make sure that parties not present at the hearing are noticed.
- Enforce caregivers' rights to address the court.
- **Order the Children's Legal Services attorneys to provide notice to caregivers of the next court hearing if caregivers are not in court. § 39.502(19). See also §§ 39.301(14)(b) & 39.502(17).**
- Ask if the child had difficulty attending the hearing. Facilitate telephonic or video conferencing if necessary.

Requirements for written order.

- Include findings regarding indigency and appointment or waiver of counsel.
- Include findings of whether any relatives who requested notice pursuant to § 39.301(14)(b) submitted a report to the court or spoke to the court regarding the child.
- Make a written determination of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver appeared at the hearing, either in person or remotely; and whether each caregiver had a meaningful opportunity to be heard.
- Include findings regarding the presence or absence of the child, the guardian ad litem, and counsel for all parties.
- Ensure parties were notified of the hearing.

- Ensure that the order clearly sets forth each specific date on which the residential treatment hearing was held.
- Cite the specific provision of § 39.0136 when granting continuances.
- Set the date, time, and location of the next review of the child's placement in residential treatment within 3 months until the child is placed in a less restrictive setting.